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MAILED

JUL 27 2010

In re Application of : **OFFICE OF PETITIONS**
Mi, et al. : DECISION ON APPLICATION
Application No. 10/553,685 : FOR PATENT TERM ADJUSTMENT
Filed: November 1, 2006 :
Atty. Dkt. No: 2159.0440003/EJH/J-H :
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This is a decision on the “Request For Reconsideration of Patent Term Adjustment Pursuant to 37 C.F.R. § 1.705(b),” filed February 2, 2010.

The application for patent term adjustment (“PTA”) under 37 CFR 1.705(b) is hereby **DISMISSED**.

The Determination of Patent Term Adjustment under 35 USC 154(b) mailed November 2, 2009 indicated a patent term adjustment to date of zero days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(b). Applicants herein dispute the adjustment of 12 days accorded in connection with the Office communication mailed March 25, 2008. Applicants argue that the correct period of adjustment is 26 days based on the Office communication mailed April 8, 2008 rather than 12 days based on the Office communication mailed March 25, 2008.

A review of the record reveals that an Office communication was mailed March 25, 2008, four months and 12 days after a reply was filed. Accordingly, a period of adjustment of 12 days was entered for Office delay pursuant to 37 CFR 1.702(a)(2). A review of the record confirms that this was the proper period of adjustment for Office delay.

The subsequent mailing of a communication by the examiner altering the previous action does not negate the fact that the Office took action in this application within the meaning of § 1.702(a)(2) on March 25, 2008. The examiner does not have the authority to vacate, rescind, or withdraw an Office action. Unless vacated by the Technology Center Director, for purposes of calculating patent term adjustment, the action originally mailed by the examiner on March 25, 2008 will be used to calculate the amount of Office delay. It follows that the examination delay pursuant to 37 C.F.R. § 1.702(a)(2) remains 12 days.

In view thereof, no adjustment to the patent term will be made.

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the

issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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